

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 10000

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1973

Mr. FASCELL introduced the following bill; which was referred to the Committee on Government Operations

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## A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       SECTION 1. SHORT TITLE.—This Act may be cited as  
4       the “Government in the Sunshine Act”.

5       SEC. 2. DECLARATION OF POLICY.—It is hereby de-  
6       clared to be the policy of the United States that the public  
7       is entitled to the fullest practicable information regarding  
8       the decisionmaking processes of the Federal Government.

9       SEC. 3. DEFINITIONS.—For purposes of this Act—

10       (1) “National security” means—

11       (A) the protection of the United States against

1 actual or potential attack or other hostile acts of a foreign  
2 power;

3 (B) the obtaining of foreign intelligence information  
4 deemed essential to the security of the United States;

5 (C) the protection of national security information  
6 against foreign intelligence activities; or

7 (D) the protection, to the extent deemed necessary  
8 by the President of the United States against the over-  
9 throw of the Government by force; and

10 (2) "Person" includes an individual, partnership, cor-  
11 poration, associated governmental authority, or public or  
12 private organization.

13 AGENCY PROCEDURES

14 SEC. 4. (a) This section applies, according to the pro-  
15 visions thereof, to any agency, as defined in section 551  
16 (1) of title 5, United States Code, where the body com-  
17 prising the agency consists of two or more members. Ex-  
18 cept as provided in subsection (b), all meetings (includ-  
19 ing meetings to conduct hearings) of such agencies at  
20 which official action is considered or discussed shall be open  
21 to the public.

22 (b) Subsection (a) shall not apply to any portion or  
23 portions of an agency meeting where the agency determines  
24 by vote of a majority of its entire membership—

25 (1) will probably disclose matters necessary to be

1 kept secret in the interests of national security or the  
2 confidential conduct of the foreign relations of the United  
3 States;

4 (2) will relate solely to individual agency personnel  
5 or to internal agency office management and proce-  
6 dures or financial auditing;

7 (3) will tend to charge with crime or misconduct,  
8 or to disgrace, injure the professional standing or other-  
9 wise expose to public contempt or obloquy any individ-  
10 ual, or will represent a clearly unwarranted invasion of  
11 the privacy of any individual: *Provided*, That this sub-  
12 section shall not apply to any government or officer or  
13 employee with respect to his official duties or employ-  
14 ment: *And provided further*, That as applied to a wit-  
15 ness at a meeting to conduct a hearing, this subsection  
16 shall not apply unless the witness requests in writing that  
17 the hearing be closed to the public;

18 (4) will probably disclose the identity of any in-  
19 former or law enforcement agent or of any information  
20 relating to the investigation or prosecution of a criminal  
21 offense that is required to be kept secret in the interests  
22 of effective law enforcement;

23 (5) will disclose information relating to the trade  
24 secrets or financial or commercial information pertaining  
25 specifically to a given person where—

1           (A) the information has been obtained by the  
2           Federal Government on a confidential basis other  
3           than through an application by such person for a  
4           specific government financial or other benefit; and

5           (B) Federal statute requires the information to  
6           be kept confidential by government officers and em-  
7           ployees, and

8           (C) the information is required to be kept secret  
9           in order to prevent undue injury to the competitive  
10          position of such persons;

11          (6) will relate to the conduct or disposition (but  
12          not the initiation) of a case of adjudication governed by  
13          the provisions of the first paragraph of section 554 (a)  
14          of title 5, United States Code, or of subsection (1), (2),  
15          (4), (5), or (6) thereof.

16          A separate vote of the agency members shall be taken with  
17          respect to each agency meeting that is closed to the public  
18          pursuant to this subsection. The vote of each agency mem-  
19          ber participating in such vote shall be recorded and published  
20          and no proxies shall be allowed. In the case of any closing  
21          of portions of a meeting to the public pursuant to this sub-  
22          section, the agency shall promptly publish an explanation of  
23          its action.

24          (c) Each agency shall make public announcement of  
25          the date, place, and subject matter of each meeting at which

1 official action is considered or discussed (whether open or  
2 closed to the public) at least one week before each meeting  
3 unless the agency determines by a vote of the majority of  
4 its members that agency business requires that such meetings  
5 be called at an earlier date, in which case the agency shall  
6 make public announcement of the date, place, and subject  
7 matter of such meeting at the earliest practicable opportunity.

8 (d) A complete transcript, including a list of all per-  
9 sons attending and their affiliations, shall be made of each  
10 meeting of each agency at which official action is considered  
11 or discussed (whether open or closed to the public). Except  
12 as provided in subsection (e) of this section a copy of each  
13 such meeting shall be made available to the public for inspec-  
14 tion, and additional copies of any transcript shall be furnished  
15 to any person at the actual cost of duplication.

16 (e) In the case of meetings closed to the public pur-  
17 suant to subsection (b) of this section, the agency may  
18 delete from the copies of transcripts made available or fur-  
19 nished to the public pursuant to subsection (d) of this section  
20 those portions, which the agency determines by vote of a  
21 majority of its membership consists of materials specified in  
22 paragraph (1), (2), (3), (4), or (5) of subsection (b) of  
23 this section. A separate vote of the agency shall be taken with  
24 respect to each transcript. The vote of each agency member  
25 participating in such vote shall be recorded and published,

1 and no proxies shall be allowed. In place of each portion  
2 deleted from copies of the meeting transcript made available  
3 to the public, the agency shall supply a written explanation  
4 of why such portion was deleted and a summary of the sub-  
5 stance of the deleted portion that does not itself disclose in-  
6 formation specified in paragraph (1), (2), (3), (4), or  
7 (5) of subsection (a). The agency shall maintain a complete  
8 verbatim copy of the transcript of each meeting (including  
9 those portions deleted from copies made available to the  
10 public) for a period of at least two years after such meeting.

11 (f) Each agency subject to the requirements of this  
12 section shall, within one hundred and eighty days after the  
13 enactment of this Act, following published notice in the Fed-  
14 eral Register of at least thirty days and opportunity for  
15 written comment by interested persons, promulgate reg-  
16 ulations to implement the requirements of subsections (a)  
17 through (e) inclusive of this section. Any citizen or person  
18 resident in the United States may bring a proceeding in the  
19 United States Court of Appeals for the District of Columbia  
20 Circuit—

21 (1) to require an agency to promulgate such reg-  
22 ulations if such agency has not promulgated such reg-  
23 ulations within the time period specified herein; or

24 (2) to set aside agency regulations issued pursuant  
25 to this subsection that are not in accord with the require-

1       ments of subsections (a) through (e) of this section  
2       inclusive, and to require the promulgation of regulations  
3       that are in accord with such subsections.

4       (g) The district courts of the United States shall have  
5       jurisdiction to enforce the requirements of subsections (a)  
6       through (e) inclusive of this section by declaratory judg-  
7       ment, injunctive relief, or otherwise. Such actions may be  
8       brought by any citizen or person resident in the United  
9       States. Such actions shall be brought in the district wherein  
10      the plaintiff resides, or has his principal place of business,  
11      or where the agency in question has its headquarters. In  
12      deciding such cases the court may examine any portion of  
13      a meeting transcript that was deleted from the publicly  
14      available copy. Among other forms of equitable relief, the  
15      court may require that any portion of a meeting transcript  
16      improperly deleted from the publicly available copy be made  
17      publicly available for inspection and copying, and, having  
18      due regard for orderly administration and the public interest,  
19      may set aside any agency action taken or discussed at an  
20      agency meeting improperly closed to the public.

21      (h) In any action brought pursuant to subsection (f)  
22      or (g) of this section, costs of litigation (including reason-  
23      able attorney's and expert witness fees) may be apportioned  
24      to the original parties or their successors in interest when-  
25      ever the court determines such award is appropriate.

1       (i) The agencies subject to the requirements of this  
2 section shall annually report to Congress regarding their  
3 compliance with such requirements, including a tabulation  
4 of the total number of agency meetings open to the public,  
5 the total number of meetings closed to the public, the reasons  
6 for closing such meetings, and a description of any litigation  
7 brought against the agency under this section.

8       SEC. 5. (a) Title 5 of the United States Code is  
9 amended by adding after section 557 the following:

10       “EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING

11       “SEC. 557. (a) This section applies, according to the  
12 provisions thereof, to the following proceedings:

13               “(1) any proceeding to which section 557 (a) of  
14 this title applies;

15               “(2) any rulemaking proceeding with respect to  
16 which an agency is required by section 553 of this title  
17 to afford public notice and opportunity for participation  
18 by interested persons: *Provided*, That for purposes of  
19 this section the exemption from such requirements in  
20 section 553 (a) (2) of matters relating to public prop-  
21 erty, loans, grants, benefits, or contracts shall not be  
22 effective; or

23               “(3) any proceeding to prepare an environmental  
24 impact statement required by section 102 (2) (c) of the  
25 National Environmental Policy Act.



1       “(b) In any agency proceeding which is subject to  
2       subsection (a) of this section, except to the extent required  
3       for the disposition of ex parte matters as authorized by  
4       law—

5       “(1) no interested person (including members or  
6       employees of other government agencies) shall make or  
7       cause to be made to any member of the agency in ques-  
8       tion, hearing examiner, or employee who is or may be  
9       involved in the decisional process of said proceeding, an  
10      ex parte communication relevant to the events of the  
11      proceeding;

12      “(2) no member of the agency in question, hearing  
13      examiner, or employee who is or may be involved in the  
14      decisional process of said proceeding, shall make or  
15      cause to be made to an interested person an ex parte  
16      communication relevant to the merits of the proceeding;

17      “(3) a member of the agency in question, hearing  
18      examiner, or employee who is or may be involved in the  
19      decisional process of said proceeding, who receives a  
20      communication in violation of this subsection shall place  
21      in the public record of the proceeding—

22              “(A) written material submitted in violation of  
23              this subsection; or

24              “(B) memorandums stating the substance of

1           all oral communications submitted in violation of  
2           this subsection; or

3           “(C) responses to the materials described in  
4           subparagraphs (A) and (B) of this subsection;

5           “(4) upon receipt of a communication in violation  
6           of this subsection from a party to any proceeding to  
7           which this section applies, the hearing examiner or em-  
8           ployee presiding at the hearings may, to the extent  
9           consistent with the interests of justice and the policy  
10          of the underlying statutes, require the persons or party to  
11          show cause why his claim or interest in the proceeding  
12          should not be discussed, denied, disregarded, or other-  
13          wise adversely affected by virtue of such violation; and

14          “(5) the prohibitions of this subsection shall apply  
15          at such time as the agency shall designate, having due  
16          regard for the public interest in open decisionmaking  
17          by agencies, but in no case shall they apply later than  
18          the time at which a proceeding is noticed for hearing  
19          or opportunity for participation by interested persons  
20          unless the person is responsible for the communication  
21          has knowledge that it will be noticed, in which case  
22          said prohibition shall apply at the time of his acquisition  
23          of such knowledge.

24          “(c) Each agency subject to the requirements of this  
25          section shall, within one hundred and eighty days after the

1 enactment of this section, following published notice in  
2 the Federal Register of at least thirty days and opportu-  
3 nity for written comment by interested persons, promul-  
4 gate regulations to implement the requirements of subsec-  
5 tion (b) of this section. Any citizen or person resident  
6 in the United States may bring a proceeding in the United  
7 States Court of Appeals for the District of Columbia  
8 Circuit—

9 “(1) to require any agency to promulgate such  
10 regulations if such agency has not promulgated such  
11 regulations within the time period specified herein;

12 “(2) to set aside agency regulations issued pursu-  
13 ant to this subsection that are not in accord with the  
14 requirements of subsection (b) of this section; and to  
15 require the promulgation of regulations that are in  
16 accord with such subsection.

17 “(d) The district courts of the United States shall have  
18 jurisdiction to enforce the requirements of subsection (b)  
19 of this section by declaratory judgment, injunctive relief,  
20 or otherwise. Such action may be brought by any citizen  
21 of or person resident in the United States. Such actions  
22 shall be brought in the district wherein the plaintiff re-  
23 sides or has his principal place of business or where the  
24 agency in question has its headquarters. Where a person  
25 other than an agency, agency member, hearing examiner,

1 or employee is alleged to have participated in a violation  
2 of the requirements of subsection (b) of this section such  
3 person may, but need not be joined with the agency as  
4 a party defendant; for purposes of joining such person  
5 as a party defendant, service may be had on such person  
6 in any district. Among other forms of equitable relief, the  
7 court may require that any ex parte communication made  
8 or received in violation of the requirements of subsection  
9 (b) of this section be published, and, having due regard  
10 for orderly administration and the public interest, may  
11 set aside any agency action taken in a proceeding with  
12 respect to which the violation occurred.

13 “(e) In any action brought pursuant to subsection  
14 (c) or (d) of this subsection, cost of litigation (includ-  
15 ing reasonable attorney’s and expert witness fees) may  
16 be apportioned to the original parties or their successors  
17 in interest whenever the court determines such award is  
18 appropriate.”

19 SEC. 6. This title and the amendments made by this  
20 title do not authorize withholding of information or limit  
21 the availability of records to the public except as provided in  
22 this title. This title is not to be construed as authority to  
23 withhold information from Congress.

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**A BILL**

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

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By Mr. FASCELL

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AUGUST 3, 1973

Referred to the Committee on Government Operations